

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

**B.P.J., by her next friend and mother,  
HEATHER JACKSON,  
Plaintiff,**

v.

**Civil Action No. 2:21-cv-00316  
Honorable Joseph R. Goodwin, Judge**

**WEST VIRGINIA STATE BOARD OF EDUCATION,  
HARRISON COUNTY BOARD OF EDUCATION,  
WEST VIRGINIA SECONDARY SCHOOL  
ACTIVITIES COMMISION, W. CLAYTON BURCH  
in his official capacity as State Superintendent, and  
DORA STUTLER in her official capacity as  
Harrison County Superintendent, PATRICK MORRISEY  
In his official capacity as Attorney General, and THE  
STATE OF WEST VIRGINIA,  
Defendants.**

**WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION'S  
MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT**

Now comes West Virginia Secondary School Activities Commission (WVSSAC), by counsel, Roberta F. Green, Anthony E. Nortz, Kimberly M. Bandy and Shuman McCuskey Slicer PLLC, and, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, hereby moves this Court to dismiss all claims asserted against it with prejudice as a matter of law because Plaintiff's First Amended Complaint fails to state a claim against WVSSAC upon which relief can be granted.<sup>1</sup> In this matter, Plaintiff has alleged that enactment of H.B. 3293 has resulted in violation of Title IX and the Equal Protection Clause of the 14th Amendment when a principal within the Harrison County Board of Education system indicated Plaintiff could not run on the girls' cross-

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<sup>1</sup> See, e.g., *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009); *Twombly v. Bell Atl. Corp.*, 550 U.S. 554, 570 (2007).

country or track teams. Plaintiff is seeking a ruling that she is entitled to participate on the sports team of the gender with which she identifies.

Here, there is no allegation that WVSSAC has taken any action to enforce H.B. 3293 nor is WVSSAC called upon to take any action at this time. As such, Plaintiff's claims against WVSSAC should be dismissed because there is no potential remedy as against WVSSAC that would result in the relief Plaintiff seeks. In support of this Motion, WVSSAC contemporaneously submits its Memorandum of Law.

Accordingly, WVSSAC respectfully requests that its Motion to Dismiss be granted.

**WEST VIRGINIA SECONDARY SCHOOL  
ACTIVITIES COMMISSION,  
By Counsel.**

*/S/ Roberta F. Green*

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In his official capacity as Attorney General, and THE  
STATE OF WEST VIRGINIA,  
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**CERTIFICATE OF SERVICE**

I hereby certify that I, Roberta F. Green, have this day, the 30th day of July, 2021, served a true and exact copy of "*West Virginia Secondary School Activities Commission's Motion to Dismiss Plaintiff's First Amended Complaint*" with the Clerk of Court using the CM/ECF System, which will send notification of such filing to the following counsel of record:

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/S/ Roberta F. Green

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